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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,330	03/25/2004	Eitan Konstantino	021770-000120US	8217

20350 7590 08/17/2010  
TOWNSEND AND TOWNSEND AND CREW, LLP  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO, CA 94111-3834

EXAMINER
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NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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08/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,330	<b>Applicant(s)</b> KONSTANTINO ET AL.	
	<b>Examiner</b> VICTOR X. NGUYEN	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 60-64, 69 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 60-64, 69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/27/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This action is in response to applicant's appeal brief filed on 6/9/2010. Upon further consideration, a new ground of rejection is made below. Further, a supervisory patent examiner has approved of reopening prosecution by signing below.

Claims 1-59, 65-68 have been previously canceled. Claims 60-64, 69-70 are pending in this present application.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 60-64 and 69-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz et al US 5,443,496.

Claim 60: Schwartz et al disclose a method for delivering a drug to a blood vessel lesion, said method comprising: inflating a balloon 20 to radially expand a scoring structure 10 comprising metal scoring elements (see col. 5, lines 5-14) carried by said balloon 20, wherein the balloon 20 inflation engages the scoring elements against stenotic material 38 in the lesion to radially penetrate the stenotic material 38; and releasing a drug (see col. 2, lines 10-27, line 61- col. 3, line 2) into the scored lesion to enhance delivery into the vessel wall 34.

Claim 61: Schwartz et al disclose the drug is carried by the balloon 20 as a platform (see col. 6, lines 8-44).

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Claims 62-64: Schwartz et al disclose wherein releasing comprises embedding the drug through the stenotic material 38 into the vessel wall 34; wherein the drug is present in capsules (see col. 7, lines 5-25); and wherein the drug is present in a drug-containing polymer (see col. 7, lines 5-64).

Claims 69-70: Schwartz et al disclose the metal scoring elements 10 are included in a scoring cage (fig. 8) slidably carried to the expansible balloon 20; wherein the scoring elements 10 in the scoring cage are arranged helically as best seen in fig. 8 over the expansible balloon 20.

### ***Response to Arguments***

3. Applicant's arguments filed 6/9/2010 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,133,732 to Wiktor      U.S. Pat. No. 4,604,762 to Robinson

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR X. NGUYEN whose telephone number is (571)272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VN/

Examiner, Art Unit 3731

8/12/2010

/Gary Jackson/

Supervisory Patent Examiner

Art Unit 3731

August 14, 2010